

are due with respect to MA EPs for the payment year.

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§ 495.210 Meaningful EHR user attestation.

(a) Qualifying MA organizations are required to attest, in a form and manner specified by CMS, that each qualifying MA EP and qualifying MA-affiliated eligible hospitals is a meaningful EHR user.

(b) Qualifying MA organizations are required to attest within 60 days after the close of a calendar year whether each qualifying MA EP is a meaningful EHR user.

(c) Qualifying MA organizations are required to attest within 60 days after close of the FY whether each qualifying MA-affiliated eligible hospital is a meaningful EHR user.

EFFECTIVE DATE NOTE: At 77 FR 54159, Sept. 4, 2012, § 495.210 was amended by revising paragraphs (b) and (c), effective Nov. 5, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 495.210 Meaningful EHR user attestation

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(b) Qualifying MA organizations are required to attest within 2 months after the close of a calendar year whether each qualifying MA EP is a meaningful EHR user.

(c) Qualifying MA organizations are required to attest within 2 months after close of the FY whether each qualifying MA-affiliated eligible hospital is a meaningful EHR user.

§ 495.211 Payment adjustments effective for 2015 and subsequent MA payment years with respect to MA EPs and MA-affiliated eligible hospitals.

(a) *In general.* Beginning for MA payment adjustment year 2015, payment adjustments set forth in this section are made to prospective payments (issued under section 1853(a)(1)(A) of the Act) of qualifying MA organizations that previously received incentive payments under the MA EHR Incentive Program, if all or a portion of the MA-EPs and MA-affiliated eligible hospitals that would meet the definition of qualifying MA-EPs or qualifying MA-affiliated eligible hospitals

(but for their demonstration of meaningful use) are not meaningful EHR users.

(b) *Adjustment based on payment adjustment year.* The payment adjustment is calculated based on the payment adjustment year.

(c) *Separate application of adjustments for MA EPs and MA-affiliated eligible hospitals.* The payment adjustments identified in paragraphs (d) and (e) of this section are applied separately. Paragraph (d) of this section applies only to qualifying MA organizations that received payment for any MA payment year for qualifying MA EPs under § 495.204. Paragraph (e) of this section applies only to qualifying MA organizations that received payment for any MA payment year for qualifying MA-affiliated eligible hospitals under § 495.204.

(d) *Payment adjustments effective for 2015 and subsequent years with respect to MA EPs.* (1) For payment adjustment year 2015, and subsequent payment adjustment years, if a qualifying MA EP is not a meaningful EHR user during the payment adjustment year, CMS—

(i) Determines a payment adjustment based on data from the payment adjustment year; and

(ii) Collects the payment adjustment owed by adjusting a subsequent year's prospective payment or payments (issued under section 1853(a)(1)(A) of the Act), or by otherwise collecting the payment adjustment, if, in the year of collection, the MA organization does not have an MA contract with CMS.

(2) Beginning for payment adjustment year 2015, a qualifying MA organization that previously received incentive payments must, for each payment adjustment year, report to CMS the following:

[the total number of potentially qualifying MA EPs]/[(the total number of potentially qualifying MA EPs) + (the total number of qualifying MA EPs)].

(3) The monthly prospective payment amount paid under section 1853(a)(1)(A) of the Act for the payment adjustment year is adjusted by the product of—

(i) The percent calculated in accordance with paragraph (d)(2) of this section;

(ii) The Medicare Physician Expenditure Proportion percent, which is CMS's estimate of proportion of expenditures under Parts A and B that are not attributable to Part C that are attributable to expenditures for physicians' services, adjusted for the proportion of expenditures that are provided by EPs that are neither qualifying nor potentially qualifying MA EPs with respect to a qualifying MA organization; and

(iii) The applicable percent identified in paragraph (d)(4) of this section.

(4) *Applicable percent.* The applicable percent is as follows:

(i) For 2015, 1 percent;

(ii) For 2016, 2 percent;

(iii) For 2017, 3 percent.

(iv) For 2018, 3 percent, except, in the case described in paragraph (d)(4)(vi) of this section, 4 percent.

(v) For 2019 and each subsequent year, 3 percent, except, in the case described in paragraph (d)(4)(vi) of this section, the percent from the prior year plus 1 percent. In no case will the applicable percent be higher than 5 percent.

(vi) Beginning with payment adjustment year 2018, if the percentage in paragraph (d)(2) of this section is more than 25 percent, the applicable percent is increased in accordance with paragraphs (d)(4)(iv) and (v) of this section.

(e) *Payment adjustments effective for 2015 and subsequent years with respect to MA-affiliated eligible hospitals.* (1)(i) The payment adjustment set forth in this paragraph (e) applies if a qualifying MA organization that previously received an incentive payment (or a potentially qualifying MA-affiliated eligible hospital on behalf of its qualifying MA organization) attests that a qualifying MA-affiliated eligible hospital is not a meaningful EHR user for a payment adjustment year.

(ii) The payment adjustment is calculated by multiplying the qualifying MA organization's monthly prospective payment for the payment adjustment year under section 1853(a)(1)(A) of the Act by the percent set forth in paragraph (e)(2) of this section.

(2) The percent set forth in this paragraph (e) is the product of—

(i) The percentage point reduction to the applicable percentage increase in

the market basket index for the relevant Federal fiscal year as a result of § 412.64(d)(3) of this chapter;

(ii) The Medicare Hospital Expenditure Proportion percent specified in paragraph (e)(3) of this section; and

(iii) The percent of qualifying and potentially qualifying MA-affiliated eligible hospitals that are not meaningful EHR users. Qualifying MA organizations are required to report to CMS

[the number of potentially qualifying MA-affiliated eligible hospitals]/ [(the total number of potentially qualifying MA-affiliated eligible hospitals) + (the total number of qualifying MA-affiliated eligible hospitals)].

(3) The Medicare Hospital Expenditure Proportion for a year is the Secretary's estimate of expenditures under Parts A and B that are not attributable to Part C, that are attributable to expenditures for inpatient hospital services, adjusted for the proportion of expenditures that are provided by hospitals that are neither qualifying nor potentially qualifying MA-affiliated eligible hospitals with respect to a qualifying MA organization.

[77 FR 54159, Sept. 4, 2012]

EFFECTIVE DATE NOTE: At 77 FR 54159, Sept. 4, 2012, § 495.211 was added, effective Nov. 5, 2012.

§ 495.212 Limitation on review.

(a) There is no administrative or judicial review under section 1869 or 1878 of the Act, or otherwise of the methodology and standards for determining payment amounts and payment adjustments under the MA EHR EP incentive program. This includes provisions related to duplication of payment avoidance and rules developed related to the fixed schedule for application of limitation on incentive payments for all qualifying MA EPs related to a specific qualifying MA organization. It also includes the methodology and standards developed for determining qualifying MA EPs and the methodology and standards for determining a meaningful EHR user, including the means of demonstrating meaningful use and the selection of measures.

(b) There is no administrative or judicial review under sections 1869 or 1878